IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6588 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MALABEN PARTIPAN SITARAM KAVANDAR (MADRASHI RAJPUT)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6588 of 2004

MR SATISH R PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MRS HB PUNANI,AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985

(hereinafter referred to as `the Act of 1985') by the order dated 20-4-2004 passed by the Police Commissioner, Ahmedabad City, she has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. It is submitted by the learned counsel for the petitioner that the petitioner has been branded as bootlegger based on two prohibition cases, one registered with Prohibition Station (East), Ahmedabad and another with Amraiwadi Police Station on 16-4-2004 and impugned order of detention was passed on 20-4-2004 while he was actually detained on 21-4-2004. It is submitted that the petitioner has sent a written representation through advocate to the detaining authority as well as the State Government on 5-5-2004 and it was received by State Government on 6-5-2004. However, said representation was decided on 7-5-2004. However, representation made to the detaining authority was forwarded to the State Govt. on 8-5-2004 which was received by the State also and though it was decided on 7-5-2004, it has not been communicated to the detenu.

4. In the present case, no affidavit has been filed by the authorities justifying the grounds mentioned in the detention order and hence, the rights of the detenu for making an effective representation has been violated which makes the order of detention is illegal. It has been held by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

In view of the above, the petitioner succeeds. Since the

petitioner succeeds only on this ground, learned counsel for the petitioner did not press other points.

5. The petition is allowed. The impugned order of detention dated 20-4-2004 passed against the detenu Malaben Partipan Sitaram Kavandar (Madrashi Rajput) is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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